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VIA ELECTRONIC AND U.S. MAIL

Shannon Bowyer Hudson, Esquire
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Re: South Carolina Electric & Gas Company ("SCE&G") and Dominion Energy, Incorporated ("Dominion") – Request for an Allowable Ex Parte Briefing Regarding SCANA Corporation ("SCANA") and Dominion's Merger; SCPSC Non-Docketed Item No. ND-2018-2-E

Dear Ms. Hudson:

As you are aware, by way of a letter dated January 11, 2018, the South Carolina Coastal Conservation League, ("SCCCL") informed the South Carolina Office of Regulatory Staff ("ORS") of certain objections to the allowable ex parte communication briefing ("Allowable Ex Parte Briefing") presented by South Carolina Electric & Gas Company ("SCE&G") and Dominion Energy, Inc. ("Dominion") to the Public Service Commission of South Carolina ("Commission") on that same date.

I am writing to you to point out that the assertions made by SCCCL are erroneous, inaccurate, and baseless and to draw your attention to the law and facts that support ORS issuing its customary certification that the Allowable Ex Parte Briefing complied with the requirements of S.C. Code Ann. § 58-3-260(C)(6)(a).

By way of background, by letter dated January 4, 2018, SCE&G and Dominion requested that the Commission authorize an allowable ex parte communication briefing to be held on January 11, 2018 beginning at 3:00 p.m. pursuant to S.C. Code Ann. § 58-3-260(C)(6)(a)(v). They further requested that the Commission post a "Notice of Request for Allowable Ex Parte Communication Briefing" on its website advising, among other things, that the subject matter of the Allowable Ex Parte Briefing would be the SCANA and Dominion merger. Upon receipt of this request, the Commission established the above-referenced non-docketed proceeding, scheduled the Allowable Ex Parte Briefing, and properly noticed this matter pursuant to S.C. Code Ann. § 58-3-260(C)(6)(a)(v). The Allowable Ex Parte Briefing was held

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on January 11, 2018, beginning at 3:00 p.m., as scheduled.¹ According to the transcript, the briefing was concluded at 4:57 p.m.

Four (4) minutes following the conclusion of the Allowable Ex Parte Briefing, SCCCL transmitted its letter to ORS asserting, without any legal support or factual basis, that SCANA and Dominion improperly “suggest[ed] a course of action for the Commission to take” and, on this basis, requests that ORS “withhold written certification” for the briefing. Contrary to SCCCL’s unfounded assertions, however, the Allowable Ex Parte Briefing fully complied with the requirements of S.C. Code Ann. § 58-3-260(C)(6)(a) and should be certified by ORS in accordance with its customary practice.

As an initial matter, it is important to note that SCCCL’s request and objections are based upon a fundamentally flawed interpretation of the requirements governing allowable ex parte proceedings. Specifically, SCCCL incorrectly asserts that “[t]he Commission’s rules” provide that “[t]he presenter may not request that the Commission take any action or suggest a course of action for the Commission to take.” The cited “rule,” however, is not a policy, rule, or regulation that has been adopted or promulgated by the Commission, but rather an “Allowable Ex Parte Guideline,” published on ORS’s website as “helpful information.” This guideline, of course, does not have the force and effect of law. *See* S.C. Code Ann. § 1-23-10(4) (“Policy or guidance issued by an agency other than in a regulation does not have the force or effect of law.”); *Doe v. S.C. Dep’t of Health & Human Servs.*, 398 S.C. 62, 68 n.7, 727 S.E. 2d 605, 608, n. 7 (2011) (“[W]e hold an agency guideline does not have the force of law, and in any event, can never trump a regulation.”).

While the Allowable Ex Parte Briefing complied with ORS’s guidelines, it should be noted that the applicable criteria for determining whether or not an allowable ex parte briefing complies with the law are found in S.C. Code Ann. § 58-3-260(C)(6)(a). In particular, S.C. Code Ann. § 58-3-260(C)(6)(a)(iii) sets forth two requirements governing allowable ex parte briefings that are pertinent to the objections raised by SCCCL. The two requirements follow:

1. S.C. Code Ann. § 58-3-260(C)(6)(a)(iii) requires each party, person, commissioner, or commission employee present at the briefing to file a certification that “**no commitment, predetermination, or prediction of any commissioner’s action** as to any ultimate or penultimate issue **or any commission employee’s opinion or recommendation** as to any ultimate or penultimate issue in any

¹ Based upon the assertions made in the letter, SCCCL’s counsel presumably was aware of the Allowable Ex Parte Briefing and either attended the proceeding in person or observed it via the Commission’s live streaming technology. In any event, SCCCL and its counsel were on notice of the allowable ex parte briefing and apparently fully observed the briefing that was made.

proceeding **WAS REQUESTED** by any person or party.” (Emphasis added). A review of the record clearly reflects that no commitment, predetermination, or prediction was requested by either SCE&G or Dominion.

2. S.C. Code Ann. § 58-3-260(C)(6)(a)(iii) also requires each party, person, commissioner, or commission employee present at the briefing to certify that no “**commitment, predetermination, or prediction WAS GIVEN by any commissioner or commission employee** as to any commission action or commission employee opinion or recommendation on any ultimate or penultimate issue.” (Emphasis added). Again, a review of the record clearly reflects that no commitment, predetermination, or prediction was given by any commissioner or commission employee. The Allowable Ex Parte Briefing therefore did not violate the provisions of S.C. Code Ann. § 58-3-260(C)(6)(a)(iii) in any way.

Although SCCCL identifies certain statements it asserts were “meant to suggest to the Commission that it should approve the utilities’ upcoming merger petition,” none of the identified statements, or any others, reflect that any request was made of the Commissioners or Commission employees for a commitment, predetermination, or prediction regarding the proposed merger. Nor does the record reflect that any Commissioner or Commission employee gave any such commitments, predeterminations, or predictions. Rather, the Allowable Ex Parte Briefing only presented factual information to the Commission regarding the proposed merger. Therefore, under the applicable law it is entirely appropriate for the designee of the ORS Executive Director to provide its customary certification, pursuant to S.C. Code Ann. § 58-3-260(C)(6)(a)(i), that the briefing “was conducted in compliance with the provisions of” S.C. Code Ann. § 58-3-260(C)(6)(a).”

Furthermore, the Commission presumably will “grant[] to every other party or person requesting an allowable ex parte communication on the same or similar matter that is or can reasonably expected to become an issue in a proceeding, similar access and a reasonable opportunity to communicate” regarding these issues. See S.C. Code Ann. § 58-3-260(C)(6)(a)(iv). To the extent SCCCL desires to provide additional or alternative information to the Commission about the proposed merger, it therefore may request similar access and a reasonable opportunity to provide its own allowable ex parte communication briefing on this same or similar matter pursuant to S.C. Code Ann. § 58-3-260(C)(6)(a)(vii). Accordingly, SCCCL has the option to avail itself of its statutory rights in this regard and, by complying with the allowable ex parte communication briefing requirements, may provide the Commission with additional information regarding these matters, should it choose to do so.

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In conclusion, the Allowable Ex Parte Briefing conducted by SCE&G and Dominion satisfied and fully complied with the requirements of S.C. Code Ann. § 58-3-260(C)(6)(a). No request was made during the Allowable Ex Parte Briefing for a commitment, predetermination, or prediction of any Commissioner's action as to any ultimate or penultimate issue regarding the proposed merger or any Commission employee's opinion or recommendation as to any ultimate or penultimate issue. Likewise, no commitment predetermination, or prediction was given by any Commissioner or Commission employee as to any Commission action or Commission employee opinion or recommendation on any ultimate or penultimate issue during the Allowable Ex Parte Briefing. The Allowable Ex Parte Briefing therefore was conducted in full compliance with the applicable statutory requirements. Consequently, SCE&G asserts that ORS has both the factual basis and the legal authority to make its customary certification to the Commission regarding this Allowable Ex Parte Briefing.

Thank you in advance for your consideration of the points set forth in this letter and the clear language of the statute pursuant to which the Allowable Ex Parte Briefing was requested, authorized, and conducted. If any further information is needed, please advise.

Very truly yours,



K. Chad Burgess

KCB/kms

cc: Joseph Melchers, Esquire
J. Blanding Holman IV, Esquire